THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 10595 of 2005

ORDER :

Heard Sri M.V.Pratap Kumar, learned counsel for the petitioner and learned Government Pleader for Revenue and perused the records.

2. The present writ petition came to be filed seeking to declare the notice dated 27.03.2005 issued by the third respondent, as illegal and arbitrary.

3. The averments in the affidavit filed in support of the writ petition would show that the father of the petitioner filed a declaration in LCC No.2487/CTP/75 on the file of Land Reforms Tribunal, Eluru, on behalf of his family wherein it was found that he is in possession of surplus land to an extent of 0.6997 holdings. Accordingly, when the father of the petitioners sought to surrender Acs.26.52 cents in RS Nos.441/1, 441/1A, 446/1 to 6 and 447/1 to 4 of Makkinavarigudem, situated in Chintalapudi Taluq of West Godavari District, the primary Tribunal refused to accept the proposed surrender. Aggrieved by which, he preferred an appeal before the Land Reforms Appellate Tribunal, Eluru, which was allowed by its order dated 15.07.1993 and the same has become final. While things stood thus, the third respondent issued a notice dated 27.03.2005 stating that he would take possession of the lands in Survey Nos.249 and 328 of different extents as per the directions of the second

respondent. Challenging the same, the present writ petition came to be filed.

4. The main ground taken by the learned counsel for the petitioners is that in view of the orders passed by the Land Reforms Appellate Tribunal in file No.35 of 87, wherein the surrender made by the father of the petitioners was accepted, now the primary authority has no jurisdiction to issue notice demanding surrender of other land, when the order of the appellate authority has become final.

5. By an order dated 29.04.2005, this Court while issuing *rule nisi* granted interim suspension, as prayed for. Subsequently, a counter affidavit came to be filed by the third respondent disputing the averments made in the writ affidavit. It is stated that the declarant who was directed to surrender 0.6629 standard holding under the Act, was accordingly issued notice in Form-VI giving time to the declarant, to surrender the land but failed to do so, as a result of which, the Special Deputy Tahsildar selected the lands admeasuring Acs.13 in R.S.Nos.249 and 328 situated within the limits of Makkinavarigudem village and issued a notice under Section 10(4) of the Act. Thereafter, the declarant submitted an objection petition stating that he is ignorant of steps to be taken pursuant to the notice in Form-VI and requested to accept the lands already surrendered in lieu of lands covered under the notice under Section 10 (4) of the Act. It is stated that pursuant thereto, Form VIII notification was published and on verification it was found that the proposed lands were Government assigned lands to poor under conditional pattas granted much prior to the enactment of A.P.Land Ceiling Act and all these lands were

mortgaged to SC, BC Corporation, who excavated three borewells. On coming to know about the said facts, the Tribunal issued notice to the declarant seeking relavant information. Thereafter, the declarant is said to have filed an objection petition, which was dismissed on the ground of false statements given by the declarant. Thereafter, an appeal came to be filed by the declarant in LRA No.35 of 87, which was allowed by the Land Reforms Appellate Tribunal, West Godavari, Eluru, setting aside the order of the Primary Tribunal. It is stated that as the declarant failed to appear before the Revenue Divisional Officer for enquiry, the MRO issued the impugned notice to the declarant. In view of the above circumstances, it cannot be said that there is no jurisdiction to issue the notice by the third respondent.

6. As seen from the material placed on record and as seen from the averments in the counter affidavit, the findings of the primary authority rejecting the request of the petitioners' father with regard to surrender of land was reversed by the appellate authority. Further, as seen from the order of the Tribunal, the father of the petitioners originally filed declaration under under A.P. Land Reforms Act in his name, but he did not show Acs.0.27 covered by R.S.No.441/1 etc., of Makkinivarigudem. The same came to be included in the holding on the basis of the report of the verification officer wherein he mentioned that the said lands are in possession of the father of the petitioners as tenant. The primary Tribunal computed the holding of the declarant and held that he holds land equivalent to 1.6997 S.H. and the excess of 0.6697 S.H. is liable to be surrendered. In an appeal, the holdings were reduced and the

declarant was directed to surrender 0.6629 S.H. under the Act. The primary Tribunal rejected the request of the father of the petitioners on the ground that the appellant was not in physical possession and enjoyment of the land and the same was mortgaged to the Corporation for excavation of borewells. Aggrieved by the order of the Tribunal, an appeal in L.R.A.No.35 of 1988 was preferred. It is to be noted here that if the land which the petitioners now intends to surrender was not included in the holding, declarant could not have been found with excess of land. When he was asked to surrender his land, he proposed these lands to surrender. Sub-Section 3(1) of the A.P.Land Reforms Act (COAH)(for short, 'the Act'), which defines "holding" mean "the entire land held by a person as an owner, as a limited owner; as a usufructuary mortgagee; as a tenant; who is in possession by virtue of a mortgage by conditional sale or through part performance of a contract for the sale of land or otherwise..." Section 10 of the Act deals with the surrender of the land, Section 11 provides that where any land is surrendered under the said Act by an owner, the Revenue Divisional Officer, may subject to such Rules as may be prescribed, by order, take possession of such land, which shall thereupon vest in the Government free from all encumbrances from the date of order. Even if the declarant has surrendered the excess land, it cannot be held that to the extent of his interest in the land, it vests in the Government, if the tenants are in possession and the physical possession of the land has not been delivered as held in *State of A.P. Vs. Alluri Lacharao and others*[1]. Sub-Section 6 of Section 12 of the Act reads - (6) Notwithstanding anything contained in his

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[1] 1979(1) APLJ

Section, where any land surrendered by an usufructuary mortgagee or a tenant or a person in possession referred to Sub-Section (4), is also a land surrendered by the owner, the provision of Section 11 shall apply. Section 10(5) entitles a Tribunal to refuse to accept the surrender of any land in the circumstances stated therein.

7. It is to be noted that in the instant case, about Acs.26.00 of land is surrendered as surplus by the appellant which was in his possession as lessee. Section 12 of the Act states that "where any land is surrendered or is deemed to have been surrendered under this Act by any usufructuary mortgagee or tenant the possession of such land shall subject to such rules as may be prescribed, revert to the owner". A reading of Sub-Section 6 of Section 12 makes it clear that only when the land is surrendered by the tenant as well as the owner, the provisions of Section 11 shall apply. When the land is surrendered by the tenant and not surrendered by the owner, the provisions of Section 12(4) of the Act would apply and the possession of the land would revert to the owner. Rule 9 of the A.P.Land Reforms Act (Ceiling) Rules, 1974 states "Where any land is surrendered or is deemed to have been surrendered under the said Act by inter alia, tenant the possession of such land shall as soon as may be after a seasonal crop and the land is harvest reverts to the owner except in a case where the owner himself surrenders such land as surplus, under the provision of the Act where upon it shall vest in the Government free from all encumbrances." Therefore, the question of not accepting surrender, when it is surrendered by the tenant, would not arise. When the tenant surrenders the land in his holding as lessee

the same has to be recorded. If such a course is not adopted, untold complications would arise. For the purpose of computation of the holding of the land of a person under the Act, the possession under various capacities was also directed to be included. In the facts of the present case, towards the excess, the appellant has proposed about Acs.26.00 of land in his possession as tenant. The Primary Tribunal cannot reject this by recoursing to Section 10 of the Act. It has to be accepted. It would revert back to the owner. The Tribunal has to see if the owner also holds an excess land, then it can direct him to surrender the excess, if any. If he is within the limits, it has to be recorded as such and the proceedings have to be closed.

8. From the above circumstances and in view of various provisions of the Act referred to above and since the order in the appeal has become final, the impugned notice is liable to be set aside.

9. Accordingly, the writ petition is allowed setting aside the notice dated 27.03.2005 in RC.No.LCC 2487/ctp/75, issued by the third respondent. No costs. However, it is always open to the respondent authorities to take steps if any, in accordance with law.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

03.08.2017
vhb